

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**PHILLIP ANTHONY PORTER**

**PLAINTIFF**

**v.**

**CAUSE NO. 1:16CV15-LG-RHW**

**FRANK SPANN**

**DEFENDANT**

**ORDER GRANTING MOTION TO  
DISMISS FOR LACK OF JURISDICTION**

**BEFORE THE COURT** is the Motion to Dismiss for Lack of Jurisdiction [4] filed by the defendant Frank Spann. The plaintiff Phillip Anthony Porter has not filed a response in opposition to the Motion. After reviewing the Motion, the record in this matter, and the applicable law, the Court finds that the Motion to Dismiss should be granted.

**DISCUSSION**

Porter alleges that his adjacent neighbor Spann committed a trespass by “cutting timber, removing vegetation, and altering the physical and topographical makeup of Plaintiff’s property,” which is located in Greene County, Mississippi. (Compl. at 2, ECF No. 1). Porter also alleges that Spann’s actions constituted negligence. (*Id.* at 3). In his Complaint, Porter alleges that he is a citizen of Alabama and that Spann is a citizen of Mississippi. (*Id.* at 1). However, Spann has filed the present Motion to Dismiss for Lack of Jurisdiction, asserting that diversity of citizenship is lacking because Spann is actually a resident of Alabama. Porter has not filed a response to the Motion to Dismiss or otherwise disputed that Spann is actually a resident of Alabama.

28 U.S.C. § 1332 confers federal diversity jurisdiction over civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and the civil action is between citizens of different states. Since the parties do not currently dispute that Spann and Porter are both residents of Alabama, diversity jurisdiction does not exist, and this lawsuit must be dismissed for lack of jurisdiction.

**IT IS, THEREFORE, ORDERED AND ADJUDGED** that the Motion to Dismiss for Lack of Jurisdiction [4] filed by the defendant Frank Spann is **GRANTED**. This lawsuit is **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.

**SO ORDERED AND ADJUDGED** this the 22<sup>nd</sup> day of March, 2016.

s/ *Louis Guirola, Jr.*  
LOUIS GUIROLA, JR.  
CHIEF U.S. DISTRICT JUDGE